

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Dianne Barker,

Plaintiff,

vs.

City of Phoenix et al.,

Defendants.

No. CV-11-01543-PHX-NVW

**ORDER**

This is an action by plaintiff against the City of Phoenix, its Mayor Phil Gordon, an insurance company and two individuals. The action arises out of an automobile accident which the Phoenix Police investigated. The Complaint seeks “compensation for personal injury & property damages” and punitive damages.

Before the Court are the City and the Mayor’s Motion to Dismiss (Doc. 4) for failure to state a claim upon which relief can be granted and Plaintiff’s Motion to Remand (Doc. 5). The Motion to Remand states no basis to challenge the remand or the subject matter jurisdiction of this Court. The Complaint is grounded in part in “1st Amendment Constitution Free Speech violation.” This arises under the Constitution of the United States and is therefore within the original jurisdiction of this Court as arising under federal law. 28 U.S.C. § 1331. The Motion to Remand will be denied.

The Complaint states no claim under federal law or state law against the City or the Mayor. Plaintiff may have claims against the other persons involved in the accident, but not against the City or the Mayor. Their Motion to Dismiss will be granted. Plaintiff


1 will be given one opportunity to amend her complaint to attempt to state a claim against  
2 the City and the Mayor. If she does not so amend, judgment will be entered in favor of  
3 the City and the Mayor.

4 IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand (Doc. 5) is  
5 denied.

6 IT IS FURTHER ORDERED that City and the Mayor's Motion to Dismiss  
7 (Doc. 4) is granted.

8 IT IS FURTHER ORDERED that Plaintiff may have until September 23, 2011, to  
9 file an amended complaint attempting to state a claim against the City and the Mayor. If  
10 Plaintiff does not so amend, judgment will be entered in favor of the City and the Mayor  
11 without further notice to Plaintiff, and this action will be remanded to the Superior Court  
12 as to the remaining defendants under 28 U.S.C. § 1367.

13 Dated this 7th day of September, 2011.

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17 Neil V. Wake  
18 United States District Judge  
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